

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1342 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.50,000/- as compensation by the order dated 14.10.2005 in M.V.O.P. No.1135 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Guntur (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the death of one Adapa Koteswara Rao, who was mother of the appellant, in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.AP 16U 1818, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that one Adapa Koteswara Rao (deceased), who was yet to be married, while working as a cleaner of the lorry bearing registration

No.AP 16U 1818, owned by respondent No.1, on 09.12.1995 started and when reached Gudilova Junction of Anandapuram, Visakhapatnam District, since the driver of lorry drove it in a rash and negligent manner at high speed, it turned upside down, causing instantaneous death of the deceased. The petitioner, claiming that her son was earning Rs.1,500/- per month as a cleaner, sought a sum of Rs.1,50,000/- as compensation from respondent Nos.1 and 2, who are owner and insurer of the accident vehicle.

5. Respondent No.1-owner of the accident vehicle remained *ex parte*. Respondent No.2-insurer opposed the claim raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined herself as P.W.1 besides marking Exs.A.1 to A.5 and Ex.X.1 to substantiate her claim; whereas, on behalf of respondent No.2-Insurance Company, its Senior Assistant from local branch was examined as R.W.1 and Regional Transport Officer, Vijayawada was examined as R.W.2 and marked Exs.B.1 and B.2, which are copy of insurance policy and driving licence endorsement issued by Regional Transport Authorities, Vijayawada.

7. The Tribunal, on issue Nos.1 and 2, on the mere premise that eyewitness was not examined, arrived

at the conclusion that it is a case where Rs.50,000/- has to be granted under 'no fault liability' and, accordingly, granted the same and having found that there was no valid driving licence to the driver of the lorry at the time of the accident, the Tribunal has ordered for 'Pay and Recovery'.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that though, no witness was examined, Exs.A.1 to A.5 would clinchingly establish the manner in which the accident had occurred due to rash and negligent driving of the driver of lorry, and, therefore, sought to grant the balance amount.

9. Heard Sri A. Rajendra Babu, learned counsel for the appellant. No representation for respondent No.2- Insurance Company. Appeal was dismissed for default against respondent No.1-owner by the order dated 03.01.2012. However, dismissal of the appeal for default against respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1].

10. A perusal of Exs.A.1 to A.5, which are certified copies of F.I.R., charge sheet, inquest report, postmortem

examination certificate and Motor Vehicles Inspector's report, would clearly establish the manner in which the accident had occurred indicating the rash and negligent driving of the driver of lorry at the relevant time. In such an event, certainly, the Tribunal was not right in holding that merely because the eyewitness was not examined, and the claim cannot be decided under 'fault liability'. No doubt, R.Ws.1 and 2 were examined and Exs.B.1 and B.2 on behalf of respondent No.2-Insurance Company but their evidence was in the direction of the driver of the lorry was not holding a valid and subsisting driving licence. The Tribunal found favour with respondent No.2-Insurance Company in regard to that aspect and that has been the reason a direction has given to the Insurance Company to pay the compensation amount initially and recover the same from respondent No.2-owner of the vehicle. That direction is not challenged by respondent No.2-Insurance Company, it appears. Thus, the learned counsel for the appellant represents that no notice was served on the appellant till date. In such an event, it has to be held that the Tribunal was not right in deciding the matter under 'no fault liability' and ought to have considered the same under 'fault liability'. Since the deceased was 23 years old on the date of accident, though, died in unmarried status, even assuming that he was drawing Rs.1,500/- per month and making it half towards his contribution, applying multiplier '18' and assessing future prospects, the amount

would be nearly to or more than the claim of Rs.1,50,000/- . In that view of the matter, the appellant is entitled to a sum of Rs.1,50,000/- as claimed by her. But however, the finding recorded by the Tribunal ordering to pay the compensation initially and recover the same from respondent No.1-owner is upheld without disturbing the same.

11. Thus, the petitioner is entitled to a total sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand) as against Rs.50,000/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 6% per annum and the same is enhanced to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

12. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation as well as the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

4th April, 2016

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[\[1\]](#) 2001(1) ALT 495 (D.B.)

[\[2\]](#) 2013 ACJ 1403